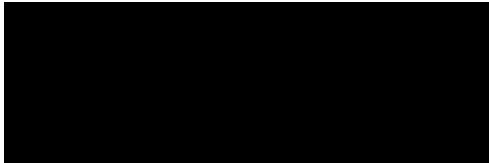




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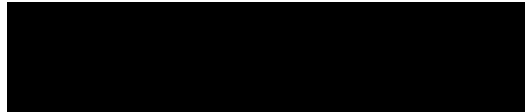
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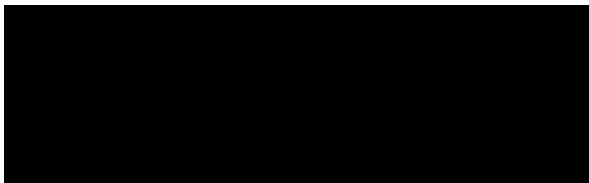
Date: NOV 28 2005

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the preference visa petition. The director subsequently affirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a computer consulting firm. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner had not established that the beneficiary had an advanced degree as defined in the regulation or that he met the qualifications of the labor certification.

On appeal, counsel submits a brief and additional evidence.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level.

The regulation at 8 C.F.R. § 204.5(k)(2) provides that a "United States baccalaureate degree or a *foreign equivalent degree* followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." (Emphasis added.)

The petitioner initially submitted the beneficiary's bachelor's degree in mathematics issued by the University of Madras, a "P.G. Diploma in Computer Applications in Business" from the Asyst Computer Centre at Loyola Autonomous College, certification for completion of a Cobol course at the National Institute of Information Technology (NIIT) and an evaluation of these documents by [REDACTED], an evaluator of foreign credentials at Medgar Evers College, City University of New York. The evaluation concluded that the beneficiary's bachelor's degree "satisfied substantially similar requirements to the completion of three years of academic studies leading to a Bachelor of Science Degree from an accredited institution of higher education in the United States." Professor [REDACTED] then reviews the beneficiary's work experience and concludes: "Due to the concentrated nature of his work experience and training in computer science and related areas, it is my opinion that [the beneficiary's] background would be comparable to university-level training in computer science." Finally, Professor Robotham states:

Based on the reputation of the University of Madras, the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework, as well as approximately six years of professional training and work experience in computer science and related areas, it is my judgment that [the beneficiary] received the equivalent of a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States.

On May 24, 2004, the director requested an evaluation of the beneficiary's education only. In response, the petitioner submitted a new evaluation from International Education Evaluations, Inc. The new evaluation notes that the beneficiary completed a three-year program at the University of Madras and that one year of education at an Indian college or university equates to one year of similar education in the United States. The

evaluation further notes that the beneficiary completed an additional 27 semester hours at Loyola College and three semester hours at NIIT. The evaluation concludes:

[The beneficiary] presents from India the Bachelor of Science degree, the Post Graduate Diploma in Computer Applications in Business, and 3 semester hours of academic credits for a course in COBOL. The Bachelor of Science degree equates to three years of academic credits (106 semester hours) that may be applied to a[n] undergraduate major in the United States. Merging his academic credits yields an equivalent total of 136 semester hours of academic credits, equating to the U.S.A. Bachelor of Science degree in Computer Science with a minor in Mathematics.

On October 19, 2004, the director denied the petition. Specifically, the director concluded that the regulations do not permit the combination of a degree with postgraduate training to achieve an equivalent foreign degree and denied the petition. After a discussion of the evidence of record, the director's decision includes references to education at Osmania University and a labor certification with a priority date of September 24, 1999. These references appear to relate to a different petition.

The petitioner filed a motion to reopen, noting that the priority date is actually August 8, 2001. Counsel asserted that the beneficiary meets the requirements of the labor certification and requests that the petition be considered under Section 203(b)(3) of the Act relating to skilled workers and professionals. The petitioner submits a third evaluation of the beneficiary's credentials from the Trustforte Corporation. The new evaluation concludes that the beneficiary's degree from the University of Madras is "the equivalent of three years of academic studies toward a Bachelor of Science Degree in Mathematics at an accredited college or university in the United States." The evaluation then discusses the beneficiary's training at Loyola College and NIIT, concluding that the beneficiary's degree and postgraduate training are "the equivalent of a Bachelor of Science Degree, with a dual major in Computer Science and Mathematics, from an accredited college or university in the United States."

On February 22, 2005, the director reaffirmed the initial denial in a new decision. The director noted that all of the evaluations submitted consistently found the beneficiary's degree from the University of Madras to be equivalent to only three years of academic study towards a bachelor's degree in the United States and concluded that the beneficiary did not have the necessary degree. In addition, the director determined that consideration under a lesser classification would serve no purpose as the beneficiary does not meet the educational requirements set forth on the labor certification.

On appeal, counsel asserts that the beneficiary's credentials "have been evaluated to be the equivalent of a U.S. Bachelor of Science degree." Counsel references two letters from [REDACTED]. In the second letter, Mr. Hernandez concluded that, in his opinion, a combination of degrees "may be deemed the equivalent of a four-year U.S. bachelor's degree."

The letters from [REDACTED] are not binding on the AAO. They do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. The only items considered official CIS policy are statutes, regulations, precedent decisions by the AAO and policy memoranda. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications*

(December 7, 2000)(copy incorporated into the record of proceeding). *See also Matter of Izummi*, 22 I&N Dec. 169, 196 (Comm. 1998).

Regarding the evaluations, *Matter of Sea, Inc.*, 19 I&N 817 (Commissioner 1988), provides:

This Service uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

Regardless, we are not contesting the evaluations, which did not find that the beneficiary has a single degree that is equivalent to a U.S. baccalaureate degree. Rather, they found that the beneficiary's degree and postgraduate training, when taken together, are equivalent to a U.S. baccalaureate degree. As stated above, the beneficiary must have a *degree* that is the equivalent of a U.S. baccalaureate degree. Neither the statute nor the conforming regulations allow for alternatives to the requirement of the specific degree required on the Form ETA-750, whether the equivalency is based on work experience or a combination of lesser educational degrees and certifications. In 1991, when the final rule for the regulation at 8 C.F.R. § 204.5 was published in the Federal Register, the legacy Immigration and Naturalization Service (legacy INS), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree*.

56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

Because the beneficiary does not possess a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary's subsequent work experience cannot be considered post-baccalaureate experience equivalent to an advanced degree. Thus, the beneficiary is not an advanced degree professional as defined in the regulations.

Moreover, even if we considered the beneficiary's eligibility for classification as a professional or skilled worker pursuant to section 203(b)(3) of the Act, the beneficiary does not have the education required by the labor certification. While a skilled worker need not have a bachelor's degree, in evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d

1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The labor certification, Part 14, requires a "Master's degree or equivalent." In the alternative, Part 15 allows for a "Bachelor's degree or equivalent in Computer Science or Engineering or a related field and five (5) years of progressive work experience." Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C). A bachelor degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). As discussed above, the combination of diplomas may not be accepted in lieu of a four-year degree. Thus, whatever classification we were to consider, the beneficiary does not meet the education requirements of the labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.